BILL NO. S-78-09- 22

SPECIAL ORDINANCE NO. S- 164-78

AN ORDINANCE approving Contract #77-W-2 between the City of Fort Wayne, Indiana and Hagerman Construction - Shambaugh, joint bidders for improvements to Three Rivers Water Filtration Plant.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That a certain Contract, dated September 6, 1978, between the City of Fort Wayne, Indiana, by and through its Mayor and the Board of Public Works, and Hagerman Construction - Shambaugh, joint bidders, for:

> Filtration Plant Additions, City of Fort Wayne, Indiana, Water Works Improvements, as follows: A 24 million gallon per day expansion to the Three Rivers Water Filtration Plant, including a chemical building with chemical storage, handling and feeding equipment, primary flocculation, sedimentation, and recarbonation tanks and equipment; secondary mixing, flocculation, sedimentation and recarbonation tanks and equipment; eight gravity filters with superstructure, chlorination equipment, process control equipment, mechanical and electrical system and site work and also including miscellaneous revisions to existing treatment facilities,

under Board of Public Works Contract #77-W-2, at a total cost of $14,728,000.00 all as more particularly set forth in said contract which is on file in the office of the Board of Public Works and is by reference incorporated herein and made a part hereof, be and the same is in all things hereby ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be effective upon passage and approval by the Mayor.

Councilman

APPROVED AS TO FORM
AND LEGALITY,

CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by Hinga, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__, at _____ o'clock _____ M., E.S.T.

DATE: 9/12/78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Stier, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9	0			
BURNS	✓				
HINGA	✓				
HUNTER	✓				
MOSES	✓				
NUCKOLS	✓				
SCHMIDT, D.	✓				
SCHMIDT, V.	✓				
STIER	✓				
TALARICO	✓				

DATE: 9-26-78

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) No. S-164-78 on the 26th day of September, 19 78

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of September, 19 78, at the hour of 11:30 o'clock A.M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 28th day of September, 19 78, at the hour of 10 o'clock A.M., E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-78-09-22

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance approving Contract #77-W-2 between the City of Fort Wayne, Indiana and Hagerman Construction - Shambaugh, joint bidders for improvements to Three Rivers Water Filtration Plant

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance DO PASS.

PAUL M. BURNS - CHAIRMAN

JAMES S. STIER - VICE CHAIRMAN

VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

FREDRICK R. HUNTER

9-26-78
DATE

CHARLES W. WESTERMAN, CITY CLERK

THIS AGREEMENT

THIS AGREEMENT, made between Hagerman Construction Corporation and Shambaugh and Son, Inc., Joint Bidders

hereinafter called the "Contractor", and the City of Fort Wayne, Indiana.

hereinafter called the "Owner".

WITNESSETH, that the Contractor and the Owner, for the considerations hereinafter named, agree as follows:

ARTICLE 1 - THE WORK. It is agreed that the Contractor shall furnish all the materials and equipment and perform all of the work shown on the Drawings and described in the Specifications entitled:

City of Fort Wayne, Indiana
Water Works Improvements
Filtration Plant Additions
Contract 77-W-2

prepared by McNamee, Porter and Seeley, acting as, and in these Contract Documents entitled, the Engineer, and shall do everything required by the Contract Documents; the Contract Documents being defined to include the Notice To Bidders, Instructions to Bidders, Proposal, Agreement, Bonds, Drawings, Specifications and any supplements thereto agreed to by both parties.

It is further agreed that the work shall be done using the following named materials and types of construction offered either in the base proposal or alternate thereto.

In accordance with the Base Proposal including Addendum No. 1 dated July 26, 1978, Addendum No. 2 dated July 28, 1978 and Addendum No. 3 dated August 2, 1978.

ARTICLE 2 - ALTERATIONS. It is agreed that the Contractor shall make alterations to the work under this Contract as the Owner may especially order in writing. Such alterations shall be paid for at prices mutually agreed upon at the time by the Owner and the Contractor or on the cost plus basis set forth below.

In the case of additions only where a price cannot be agreed upon in advance, then the Owner will pay the Contractor shall accept, as fully compensation for such work, an amount equal to the actual and necessary net cost in money to the Contractor for labor, materials and equipment (in addition to that furnished at the site) actually used therein or expended thereon, plus 30% of the total labor cost, plus 10% of the actual net material cost, plus sales tax, plus 10% of the actual net cost of any subcontract work plus superintendnece, power, the use of tools and plant available at the site, federal and state taxes, contractor's compensation insurance, public liability insurance, bond premium and all overhead and incidental expenses.

During the progress of any extra work which is to be paid for on the basis of net cost plus stipulated percentages, the Contractor shall furnish to the Owner, at the end of each day, suitable time slips showing the name of and the number of hours worked by each workman employed thereon, the nature of the work performed by such workman, and his rate of pay together with suitable and adequate memoranda of the materials used therein showing the character and amount of each such material, the sources from which it was purchased, and the price paid or to be paid therefor.

The Owner, at its discretion, may furnish to the Contractor any materials or supplies or transportation required for extra work. The Contractor shall not be entitled to any allowance for percentage on account of materials or supplies or transportation so furnished.

It is agreed that all work that may be ordered by the Owner and performed under the provisions of this Article shall be done by the Contractor in an effective and workmanlike manner and shall be subject to the same restrictions and liabilities as those which apply to the general work of this Contract; and the Contractor will be responsible for the maintenance and the Owner.

It is further agreed that no claim against the Owner on account of alterations shall be valid unless such work has been previously ordered in writing, and unless such claim has been presented for payment as soon as practicable after the completion of such work and before the making up of final estimate.

ARTICLE 3 - TIME. It is agreed that the Contractor shall begin work under this Contract within ten days after the mailing to the Contractor of the written notice to proceed and that he shall prosecute it in such manner as will bring the entire work to completion within 900 calendar days after the date of beginning, except as such time limits may be advanced in accordance with the provisions of Article 4 hereof. The time of beginning, rate of progress and date of completion are considered essential elements of the Contract.

ARTICLE 4 - EXTENSION OF TIME. It is agreed that, if the Contractor shall be unavoidably delayed in beginning or fulfilling this Contract by reason of excessive storms or floods, or by acts of Providence, by general strikes, or by court injunction, or by stopping of the work by the Owner because of any emergency or public necessity, or by the actions of other contractors engaged in this program, or by reason of alterations ordered by the Owner, the Contractor shall have no valid claim for damages on account of any cause or delay, but he shall in such case be entitled to such an extension or advancement of time periods specified in Article 3 herein as the Engineer shall adjudge to be just and reasonable; provided, however, that formal claim for such extension shall be made in writing by the Contractor within a week after the date upon which such alleged cause or delay shall have occurred.

ARTICLE 5 - LIQUIDATED DAMAGES. It is expressly convenanted and agreed that time is and shall be considered of the essence of the Contract. In the event that the Contractor shall fail in due performance of the entire work to be performed under this Contract, or to perform any certain portions thereof for which definite stipulations have been agreed to, by and at the times herein mentioned and referred to in

3, or within some other certain date subsequent to this to which the time limit for the completion of the work may have been advanced under the provisions of Article 4, the Contractor shall pay unto the Owner, as and for liquidated damages and not as penalty, the sum of One Hundred Dollars ($100.00) for each and every calendar day that the Contractor shall be in default. Said sum of One Hundred Dollars ($100.00) per day, in view of the difficulty of estimating such damages with exactness, is hereby expressly fixed and agreed upon as the damages which will be suffered by the Owner for reason of such default. It is also understood and agreed that the liquidated damages hereinbefore mentioned are in lieu of the actual damages arising from such breaches of the Contract, which said sums the Owner shall have the right to deduct from any monies in its hands, otherwise due, or to become due, to the Contractor, or as may sue for and recover compensation or damages for non-performance of this Contract at the time stipulated herein and provided for.

ARTICLE 6 - ASSIGNMENT OF CONTRACT. It is agreed that the Contractor shall not assign or transfer this Contract or sublet any part of the work embraced in it, except with the written consent of the Owner to do so.

It is further agreed that all parts of the work which may be performed by a subcontractor shall be done in conformity with and be subject to all the provisions of the Contract Documents exactly as if performed by the Contractor and his immediate employees and workmen. No subletting of the work shall in any way diminish or weaker the responsiblity of the Contractor for all parts of the work or lessen the obligations and liabilities under this Agreement.

It is likewise agreed that the Contractor shall not assign, either legally or equitably, any of the moneys payable to him under this Agreement, or his claim thereto, except with the written consent of the Owner.

ARTICLE 7 - OWNER'S RIGHT TO COMPLETE. It is agreed that, if at any time the Contractor shall become bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly fail to supply enough properly skilled workmen or sufficient suitable materials for the work, or if he should refuse or fail to make prompt payment to subcontractors or to pay promptly for materials and labor, or if he should persistently disregard laws or ordinances or the directions of the Engineer, or if he should otherwise and repeatedly violate any of the substantial provisions of this Agreement; then in such case the Owner, upon receipt of a certificate from the Engineer stating that sufficient cause exists to justify such action and stating the nature of said cause and after giving the Contractor and his sureties written notice thereof, may order him to discontinue all work under this Contract or any part thereof. Thereupon the Contractor shall at once discontinue such work or such part thereof, and shall cease to have any right to the possession of the ground. The Owner shall have the right to finish the work, or such part thereof, by contract or otherwise as he may elect, and for that purpose to take posession and make use of such materials, tools, building appliances and equipment as may be found upon the work, and to charge the cost and expense of such completion to the Contractor. The Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, the amount of such excess shall be paid to the Contractor, and if such expense shall exceed such unpaid balance, the Contractor shall pay to the Owner the amount of such excess.

It is expressly stipulated and agreed that, from and after the date of the order to discontinue work, and until such work shall have been finally completed by the Owner, neither the Contractor nor any of his agents or employees shall remove, or make any effort, directly or indirectly, to remote any of the above mentioned materials, tools, building appliances or equipment from the points at which they were located on the date of said order, except upon the written consent of the Owner to do so.

It is further understood and agreed that the foregoing provisions of this article are without prejudice to any other right or remedy which the Owner may have under this Agreement.

ARTICLE 8 - GENERAL STIPULATIONS. It is agreed that the Contractor shall comply with the following general stipulations:

Permits and Regulations. The Contractor shall secure and bear the cost of any permits or licenses of a temporary nature necessary for the prosecution of the work. In particular, he shall secure and bear the cost of shutting off and turning on public services of every nature which may be required by his operations. Where such discontinuance of service affects consumers, due and sufficient notice shall be served upon those so affected.

Workers' Compensation Insurance. The Contractor shall procure and shall maintain during the life of this Contract, Employee's Liability and Workers' Compensation Insurance for all of his employees to be engaged in work on the project under this Contract; and in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Employer's Liability and Workers' Compensation Insurance for all of the latter's employees to be engaged in such work.

If any class of employees engaged in hazardous work under this Contract is not protected under the Worker's Compensation statute, the Contractor shall provide and shall cause such subcontractor to provide adequate insurance coverage for the protection of the employees not so covered.

Contractor's Public Liability Insurance. The Contractor shall procure and shall maintain during the life of the Contract Contractor's Personal Injury Insurance in an amount not less than $500,000 for injuries, including accidental death, to each person, in an amount not less than $1,000,000 on account of each occurrence; and Contractor's Property Damage Insurance in an amount not less than $500,000 each occurrence, and $500,000 aggregate including Completed Operations and Contractural Liability coverage.

The Public Liability Insurance shall include coverage for Explosion, Collapse and Underground Hazards.

Subcontractor's Public Liability Insurance. The Contractor shall require each of his subcontractors to procure and to maintain during the life of his subcontract, Personal Injury Insurance in an amount not less than $500,000 for injuries, including accidental death, to each person, and in amount not less than $1,000,000 on account of each occurrence; and the Contractor's Property Damage Insurance in an amount not less than $500,000 each occurrence and $500,000 aggregate.

The Contractor shall require each of his subcontractors to procure and maintain during the life of this Contract Contractor's Protective Public Liability Insurance in an amount not less than $500,000 for injuries, including accidental death, to each person, and in an amount not less than $1,000,000 on account of each occurrence; and property damage in an amount not less than $500,000 each occurrence, and $500,000 aggregate.

The Public Liability Insurance shall include coverage for Explosion, Collapse and Underground Hazards.

Contractor's Automobile Bodily Injury and Property Damage Insurance.

The Contractor shall procure and shall maintain during the life of this Contract Automobile Bodily Injury Insurance in an amount not less than $500,000 for injuries, including accidental death, to each person, and in an amount not less than $1,000,000 for each occurrence; and property damage in an amount not less than $500,000 for each occurrence.

The Contractor shall procure and shall maintain during the life of this Contract Hired and Non-Ownership Automobile Bodily Injury and Property Damage Insurance in an amount not less than $500,000 for injuries, including accidental death, to each person; and in an amount not less than $500,000 for each occurrence; and property damage in an amount not less than $500,000 for each occurrence.

Liability Insurance. The Contractor shall procure and maintain during the life ... Protective Public Liability Insurance in the name of the Owner and Engineer in ... than $500,000 for injuries, including accidental death, to each person, and in an ... $1,000,000 on account of each occurrence; and property damage in an amount not ... each occurrence and $500,000 aggregate.

... Insurance. The Contractor shall insure for the life of the Contract, and until the ... Owner, all risk type builders risk insurance. The policy shall cover not less than ... fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, ... vehicles. The insurance policy shall be held jointly in the names of the Owner and the ... same as the insured the Contractor, the Engineer, and the Owner. The amount of ... the extent of the work completed, but shall at all times be at least equal to the ... amount of work and materials plus the value of the work or materials furnished or ... by the Contractor but not paid for by the Owner.

... Clause. The Contractor shall hold harmless from and indemnify the Owner and Engineer ... claims, suits, actions, costs, counsel fees, expenses, damages, judgments or decrees, by reason ... death of persons or property being damaged or injured by the performance of the Contractor or ... of its subcontractors, and suppliers, or any person employed under said Contractor, or under any of ... subcontractors, during the progress of this Contract.

... of Carriers of Insurance. The Contractor shall provide the Owner, at the time contracts are ... submitted to him for execution, certificates and policies listed below. A guarantee that ten (10) days' ... notice to the Owner prior to cancellation of or change in any such insurance shall be endorsed on each ... policy and certificate of insurance.

... Original and nine copies of Certificate of Coverage for Contractor's Workers' Compensation ... Insurance.

... Original and nine copies of Certificate of Coverage for Contractor's Public Liability Insurance.

... Original and nine copies of Certificate of Coverage for Contractor's Automobile Bodily Injury and ... Property Damage Insurance covering owned, hired, and non-owned vehicles.

... Original and two copies of policy for Owner's Protective Public Liability Insurance.

... Original and two copies of Policy of Coverage for Builder's Risk.

... Contractor shall not commence work under this Contract until he has obtained all insurance ... required and such insurance has been approved by the Owner, nor shall the Contractor allow any ... subcontractor to commence work on his subcontract until all similar insurance required of the ... subcontractor has been so obtained and approved.

... Laws and Ordinances. The Contractor shall obey and abide by all the laws of the State in which ... the work is being performed relating to the employment of labor on public work and all the laws and ... requirements of the Owner regulating or applying to public improvements.

... and Patent Rights. The Contractor shall protect and save the Owner harmless against all claims or ... actions brought against the Owner by reason of any actual or alleged infringement upon patent rights in ... any article, material, process, machine or appliance used by him in his work.

ARTICLE 9 - ARBITRATION. All matters in dispute arising from this Contract shall be promptly submitted to arbitration upon demand by either party to the dispute. The Contractor shall not delay the work because arbitration proceedings are pending, unless he shall have written permission from the

such delay shall not extend beyond the time when the arbitrators shall have an whether the work shall continue or be suspended pending decision by the . Any demand for arbitration shall be in writing and shall be delivered to the party either by personal delivery or by registered mail addressed to the last within 10 days of receipt of the Engineer's decision and in no event after final made and accepted. Should the Engineer fail within a reasonable period to make a of the Owner or Contractor a demand for arbitration may be made as if the has been rendered against the party demanding arbitration.

to act as an arbitrator who has directly or indirectly any financial interest in the any business or family relationship with the Owner, Contractor or Engineer. Each shall be qualified by experience and knowledge of the work involved in the matter to arbitration.

parties hereto shall pay one-half of the expense of such arbitration.

shall be in accordance with the procedure and standards of the American Arbitration

10 - PAYMENT. And it is agreed that, in consideration of the faithful and entire performance Contractor of his obligations under this Contract, the Owner shall pay to him, at the times and in hereinafter stipulated, the following named Contract Sum:

Fourteen Million Seven Hundred Twenty-eight Thousand and 00/100

Dollars ($ 14,728,000.00).

[illegible] shall be modified by such sums for alterations as may have been determined under the [illegible] of Article 2 herein and diminished by such sums as the Owner may lawfully deduct and retain [illegible] damages under the provisions of Article 5.

[illegible] the close of each month during which satisfactory progress has been made toward the final [illegible] of the work, the Engineer will make an estimate of the amount and value of the work which [illegible] under this Contract during that month, or since the date of the last preceding estimate. [illegible] shall not be required to be made by strict measurement or with exactness, but may be [illegible] wholly or in part by appraisement or estimation or by a consideration of accounts for labor [illegible], and it shall be sufficient if it is approximate only. Any error or inaccuracy which may [illegible] any such progress estimate may be allowed for or corrected in any subsequent estimate.

[illegible] that, before the Contractor shall demand partial or final estimates or payments, he shall [illegible] to the Owner, if and when requested to do so, supported, if required, by sworn statements, [illegible] evidence that all persons who have supplied labor, materials, or equipment for the work [illegible] under this Contract have been fully paid for the same; and that, in case such evidence be not [illegible] as aforesaid, such sums as the Owner may deem necessary to meet the lawful claims of such [illegible] may be retained by the Owner from any moneys that may be due or become due to the [illegible] under this Agreement until such liabilities shall be fully discharged and the evidence thereof [illegible] to the Owner.

[illegible], no allowance will be made in any progress estimate for materials furnished and delivered on [illegible] until such materials shall have been permanently incorporated in the work. However, in the [illegible] of heavy equipment and other indestructible items, properly stored and protected, the Engineer may [illegible] allowance in the estimate of the invoice price of such items.

[illegible] as practicable after such estimate is made up and certified and upon its approval by the Owner, [illegible] shall pay to the Contractor, on account, a sum equal to the estimate less a retaininage, except [illegible] the Owner may deduct and retain out of any such partial payment a sum for unsatisfactory work or [illegible] to meet any undischarged obligations of the Contractor for labor, materials or equipment [illegible] for the work. Periodic payment retaininage amounts shall be based on the following schedule:

[illegible] Retention of up to 10% of payments claimed until construction is 50% complete;

[illegible] After construction is 50% complete, reduction of the total retainage to 5% of payments claimed, provided that the Contractor is making satisfactory progress and there is no specific cause for greater withholding.

[illegible] When the project is substantially complete (operational or beneficial occupancy), the retained amount shall be further reduced below 5% to only that amount necessary to assure completion of the contract work;

[illegible] progress estimate made or certified by the Engineer and no partial payment made to the Contractor [illegible] the Owner shall be deemed or construed as an acceptance of any part of the work under this Contract.

[illegible] soon as practicable after the satisfactory completion of all work covered by this Agreement, the Engineer will make a final inspection of the work as a whole and will make up a final estimate of the total amount due the Contractor under the terms of the Agreement. Upon the acceptance of the completed work, the Owner will pay to the Contractor the entire amount of such final estimate, less the sums previously paid, and less such sums as the Owner may deem to be necessary to meet the undischarged obligations of the Contractor for labor, materials or equipment furnished for the work. The Contractor shall file with the Owner a sworn statement that all claims for amounts due for labor, materials, and equipment furnished for this work have been paid in full, or he shall so file in lieu thereof, a sworn statement showing in detail the nature and amount of all unpaid claims for said labor, materials and equipment.

N WITNESS WHEREOF, the parties hereto have set their hands and seals in quadruplicate, this _____ day of _____, 19____.

CITY OF FORT WAYNE, INDIANA

BY: _____
Robert E. Armstrong, its Mayor

BOARD OF PUBLIC WORKS

Henry P. Wehrenberg, Chairman

Ethel H. LaMar, Member

Max G-Scott, Member

ATTEST:

Ursula Miller, Clerk

APPROVED AS TO FORM AND LEGALITY:

City Attorney

Approved by the Common Council of the City of Fort Wayne on _____ day of _____, 1978.

Special Ordinance No. _____

CONTRACTOR

Hagerman - Shambaugh, Joint Bidders

Hagerman Construction Corporation

By: _____
(name)

Its: PRESIDENT
(Position)

Shambaugh and Son, Inc.

By: _____
(name)

Its: PRESIDENT
(Position)

Ft. Wayne, IN 77-W-2

INSTRUCTIONS FOR EXECUTING AGREEMENT

Contractor be a corporation, the folloiwng certificate should be executed.

KEVIN L. BEACH

WILLIAM O. HAGERMAN, certify that I am the ACTING MAX P. SHAMBAUGH Secretary of the corporation named as Contractor hereinabove; that THEODORE F. HAGERMAN, who signed the foregoing agreement on behalf of the Contractor, was then PRESIDENT of said Corporation; that said agreement was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

(Corporate Seal)

BY: William O. Hagerman
WILLIAM O. HAGERMAN, SECRETARY
HAGERMAN CONSTRUCTION CORPORATION

(1) STRAUS BLDG.
P.O. BOX 690
FORT WAYNE, IN. 46801

BY: Kevin L. Beach
KEVIN L. BEACH SECRETARY
SHAMBAUGH & SON, INC.

(1) CROMBEAU DRIVE
FORT WAYNE, IN. 46805

If agreement be signed by the secretary of the corporation, the above certificate should be executed by some other officer of the corporation, under the corporate seal. In lieu of the foregoing certificate there may be attached to the agreement copies of so much of the records of the corporation as will show the official character and authority of the officers signing, duly certified by the secretary or assistant secretary under the corporate seal, to be true copies.

The full name and business address of the Contractor should be inserted and the agreement should be signed with his official signature. Please have the name of the signing party or parties typewritten or printed under all signatures to the agreement.

If the Contractor should be operating as a partnership, each partner should sign the agreement. If the agreement is not signed by each partner there should be attached to the agreement a duly authenticated power of attorney evidencing the signer's (signers') authority to sign such agreement for and in behalf of the partnership.

If the Contractor be an individual, the trade name (if the Contractor be opeating under a trade name) should be indicated in the agreement and the agreement should be signed by such individual. If signed by anyone other than the Contractor there should be attached to the agreement a duly authenticated power of attorney evidencing the signer's authority to execute such agreement for and in behalf of the Contractor.

Form DA 77-W-2

PERFORMANCE AND GUARANTY BOND

KNOW ALL MEN BY THESE PRESENTS, that we Hagerman Construction Corporation and Shambaugh and Son, Inc., Joint Bidders (Contractor or Developer) as Principal, and the UNITED STATES FIDELITY AND GUARANTY COMPANY and ST. PAUL FIRE AND MARINE INSURANCE COMPANY (Insurance Company), a corporation organized under the laws of the State of MARYLAND 1896 MINNESOTA 1925 (State and Date), and duly authorized to transact business in the State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne, Indiana, an Indiana Municipal Corporation in the sum of $14,728,000.00, (Amount of work) for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by those present. The condition of the foregoing obligation is such that

WHEREAS, the Principal has entered into contract with the City or has applied for authority to construct or cause to be constructed, a water utility improvement project to become part of the City's water utility system, which said project is to be built and constructed according to plans and specifications prepared by or approved by City and known as City of Fort Wayne, Indiana, Water Works Improvements, Filtration Plant Additions, Contract 77-W-2 (Name of Project), and,

WHEREAS, the grant of authority by City to so construct such water main provides:

1. That said project shall be completed according to said plans and specifications, and there shall be filed with the City, within thirty (30) days after completion, a Completion Affidavit.

2. Said Principal is required to agree to make such adjustments, modifications, and repairs as required by the City within thirty (30) days after notice, and,

3. To agree to maintain said project for a period of one (1) year following written acceptance by the City of said project and,

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

[illegible], no change, modification, omission, or addition in and to the terms or [illegible] of said contract, plans, specifications, drawings, or profile, or [illegible] irregularity or defect in said contract or in the proceedings preliminary to [illegible] and awarding thereof shall in any way affect or operate to release or [illegible] said surety and the provisions and conditions of Chapter 258 of the [illegible] of the General Assembly of Indiana, of 1933, shall be, operate as, and become [illegible] of the terms of this bond and said contract the same as if incorporated [illegible].

[illegible], if the principal shall perform all of the terms and conditions [illegible] of it by the consent to cause said project to become a part of the [illegible] utility system, and shall for one (1) year after acceptance of [illegible] by City maintain said project and shall indemnify the City for [illegible] that City may sustain by reason of the Principal's failure to comply [illegible] of the terms of the authorization, then this obligation shall be void, [illegible] it shall remain in full force and effect.

HAGERMAN - SHAMBAUGH, JOINT BIDDERS

[illegible] FIDELITY AND GUARANTY COMPANY

[illegible] Donald A. Dahle

[illegible]-IN-FACT

Hagerman Construction Corporation

BY: [signature]
(Principal) THEODORE F. HAGERMAN
PRESIDENT

Shambaugh and Son, Inc.

BY: [signature]
(Principal) MAX P. SHAMBAUGH
PRESIDENT

ST. PAUL FIRE AND MARINE INSURANCE COMPANY
(Insurance Company)

BY: [signature]
Surety ATTORNEY-IN-FACT

[illegible] 77-W-2

CERTIFIED COPY

GENERAL POWER OF ATTORNEY

No. 87671

Know all Men by these Presents:

That UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint C. H. Yaste, Arthur C. Frericks, Donald T. Belbutowski, Gerald A. Dahle and Leonard Shirley

of the City of Fort Wayne, State of Indiana its true and lawful attorneys in and for the State of Indiana

for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever ~~his~~ ~~his~~ anyone of the said C. H. Yaste and the said Arthur C. Frericks and the said Donald T. Belbutowski and the said Gerald A. Dahle and the said Leonard Shirley

may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 28th day of March, A. D. 19 77

UNITED STATES FIDELITY AND GUARANTY COMPANY.

(Signed) By..... James A. Mappus
Vice-President.

(SEAL)

(Signed) ..... John C. Vaeth, Jr.
Assistant Secretary.

STATE OF MARYLAND, BALTIMORE CITY, } ss:

On this 28th day of March, A. D. 1977, before me personally came James A. Mappus, Vice-President of the UNITED STATES FIDELITY AND GUARANTY COMPANY and John C. Vaeth, Jr., Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they resided in the City of Baltimore, Maryland; that they, the said James A. Mappus and John C. Vaeth, Jr. were respectively the Vice-President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first day in July, A. D. 19....78..

(SEAL) (Signed) ..... Margaret M. Hurst
Notary Public.

STATE OF MARYLAND BALTIMORE CITY, } Sct.

I, Robert H. Bouse, Clerk of the Superior Court of Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that Margaret M. Hurst, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 28th day of March, A. D. 1977

(SEAL) (Signed) ..... Robert H. Bouse
Clerk of the Superior Court of Baltimore City.

FS 3 (9-67)

COPY OF RESOLUTION

That Whereas, it is necessary for the effectual transaction of business that this Company appoint agents and attorneys with power and authority to act for it and in its name in States other than Maryland, and in the Territories of the United States and in the Provinces of the Dominion of Canada and in the Colony of Newfoundland.

Therefore, be it Resolved, that this Company do, and it hereby does, authorize and empower its President or either of its Vice-Presidents in conjunction with its Secretary or one of its Assistant Secretaries, under its corporate seal, to appoint any person or persons as attorney or attorneys-in-fact, or agent or agents of said Company, in its name and as its act, to execute and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performances of contracts other than insurance policies and executing or guaranteeing bonds and undertakings, required or permitted in all actions or proceedings, or by law allowed, and

Also, in its name and as its attorney or attorneys-in-fact, or agent or agents to execute and guarantee the conditions of any and all bonds, recognizances, obligations, stipulations, undertakings or anything in the nature of either of the same, which are or may by law, municipal or otherwise, or by any Statute of the United States or of any State or Territory of the United States or of the Provinces of the Dominion of Canada or of the Colony of Newfoundland, or by the rules, regulations, orders, customs, practice or discretion of any board, body, organization, office or officer, local, municipal or otherwise, be allowed, required or permitted to be executed, made, taken, given, tendered, accepted, filed or recorded for the security or protection of, by or for any person or persons, corporation, body, office, interest, municipality or other association or organization whatsoever, in any and all capacities whatsoever, conditioned for the doing or not doing of anything or any conditions which may be provided for in any such bond, recognizance, obligation, stipulation, or undertaking, or anything in the nature of either of the same.

I, Richard Calder , an Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney given by said Company to C. H. Yaste, Arthur C. Frericks, Donald T. Belbutowski, Gerald A. Dahle and Leonard Shirley

of Fort Wayne, Indiana , authorizing and empowering them to sign bonds as therein set forth, which power of attorney has never been revoked and is still in full force and effect.

And I do further certify that said Power of Attorney was given in pursuance of a resolution adopted at a regular meeting of the Board of Directors of said Company, duly called and held at the office of the Company in the City of Baltimore, on the 11th day of July, 1910, at which meeting a quorum of the Board of Directors was present, and that the foregoing is a true and correct copy of said resolution, and the whole thereof as recorded in the minutes of said meeting.

In Testimony Whereof, I have hereunto set my hand and the seal of the UNITED STATES FIDELITY AND GUARANTY COMPANY on SEPTEMBER 6, 1978 .
(Date)

Richard Calder
Assistant Secretary.

Class 1

ST. PAUL FIRE AND MARINE INSURANCE COMPANY
ST. PAUL, MINNESOTA

(A Capital Stock Company)

Fidelity and Surety Department

CERTIFIED COPY OF POWER OF ATTORNEY

Original on File at Home Office of Company. See Certification.

KNOW ALL MEN BY THESE PRESENTS: That the St. Paul Fire and Marine Insurance Company, a corporation organized and existing under the laws of the State of Minnesota, and having its principal office in the City of Saint Paul, Minnesota, does hereby constitute and appoint

Julian M. Bowers, Harry A. Crawford, G. Parker Gee, Ronald J. Harruff, Leonard B. Koeller, Thomas G. McRae, Roland E. Weber, Louis A. Meneilly, Kathryn J. Beauchot, James E. VanDyck, individually, Fort Wayne, Indiana

its true and lawful attorneys(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said St. Paul Fire and Marine Insurance Company, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be certified to and may be revoked, pursuant to and by authority of Article V,–Section 6(C), of the By-Laws adopted by the Board of Directors of the ST. PAUL FIRE AND MARINE INSURANCE COMPANY at a meeting called and held on the 23rd day of January, 1970, of which the following is a true transcript of said Section 6(C).

"The President or any Vice President, Assistant Vice President, Secretary or Resident Secretary, shall have power and authority

(1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and
(2) To appoint Special Attorneys-in-fact, who are hereby authorized to certify to copies of any power-of-attorney issued in pursuance of this section and/or any of the By-Laws of the Company, and
(3) To remove, at any time, any such Attorney-in-fact or Special Attorney-in-fact and revoke the authority given him."

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting duly called and held on the 6th day of May, 1959, of which the following is a true excerpt:

"Now therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

IN TESTIMONY WHEREOF, the St. Paul Fire and Marine Insurance Company has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 16th day of December A. D. 19 77

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

STATE OF MINNESOTA
County of Ramsey } ss.

Vice President.

On this 16th day of December 19 77, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said that he is the therein described and authorized officer of the St. Paul Fire and Marine Insurance Company; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his signature were duly affixed by order of the Board of Directors of said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Saint Paul, Minnesota, the day and year first above written.

V.C. INNES
Notary Public, Ramsey County, Minn.
My Commission Expires April 27, 1983

CERTIFICATION

I, the undersigned officer of the St. Paul Fire and Marine Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney,* with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 6th day of September 19 78

Secretary.

*Unlimited as to character and amount.

10870 CPS Rev. 10-74 Printed in U.S.A.

STATE OF INDIANA:
SS:
COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said State, came THEODORE F. HAGERMAN AND MAX P. SHAMBAUGH as principal, and GERALD A. DAHLE AND HARRY A. CRAWFORD of the YASTE, TEAT & RYE, INC. AND INSURANCE & RISK MANAGEMENT Attorney in Fact, for said UNITED STATES FIDELITY AND GUARANTY COMPANY ST. PAUL FIRE AND MARINE INSURANCE COMPANY as surety, with both of whom I am personally acquainted, and acknowledged that they subscribed their signatures to the above and foregoing bond.

SUBSCRIBED TO, before me, a Notary Public, this 5TH. day of SEPTEMBER, 1971.

William L. Kerr
Notary Public WILLIAM L. KERR

My Commission Expires:

11-18-78

IN 77-W-2

IN RE:

WAGE SCALE

CODE: S-SKILLED
SS-SEMI SKILLED
US-UNSKILLED
IF-INDUSTRIAL FUND
PW-PER WEEK

We, the undersigned committee, being appointed to prepare a schedule of the prevailing wages to be paid in connection with, ALL CONSTRUCTION AND MAINTENANCE CONTRACTS AWARDED BY THE BOARD OF WORKS, CITY OF FT. WAYNE, INDIANA, DURING THE MONTHS OF APRIL, MAY AND JUNE, 1978.

In compliance with the provisions of CHAPTER # 319 of the acts of the GENERAL ASSEMBLY of INDIANA, 1935, have established a schedule as hereinafter set forth for the following trades to wit:

TRADES OR OCCUPATION	CLASS	RATE PER HR.	SSW	PEN	VAC	APP.	MISC.
ASBESTOS WORKER	S	12.30	50¢	75¢			3if
BOILERMAKER	S	12.55	80	1.00		3¢	
BRICKLAYER	S	10.24	45	50		1	4if
CARPENTER (BUILDING)	S	10.27		6%		7	2if
(HIGHWAY)	S	10.23	60	60		5	2if
CEMENT MASON	S	9.35	75	40		1	
ELECTRICIAN	S	11.50	50	1%+30		6	
ELEVATOR CONSTRUCTOR	S	10.91	74½	56	8%	6	
GLAZIER	S	10.20		25	40	4	25¢holidays
IRON WORKER	S	11.20	90	1.05		2	2if
LABORER (BUILDING)	S-SS US	7.70-8.60	70	50		9	
(HIGHWAY)	S-US-SS	7.60-8.45	70	50		9	
(SEWER)	S-US-SS	7.60-8.40	70	50		8	
LATHER	S	10.37		60		1	2if
MILLWRIGHT & PILEDRIVER	S	10.50		6%		7	2if
OPERATING ENGINEER (BUILDING)	S-SS US	7.90-11.00	40	55		8	
(HIGHWAY)	S-SS-US	8.10-10.87	55	65		8	
(SEWER)	S-SS-US	8.60-10.30	40	40		5	
PAINTER	S	8.60-9.60	42	45		10	6misc
PLASTERER	S	9.72	60	40			
PLUMBER & STEAMFITTER	S	11.60	55	90		7	4if
SQUARE & TERRAZZO GRINDER	S	8.10-10.10					
ROOFER	S	10.15		10			
SHEETMETAL WORKER	S	11.48	50	60		10	11if
TEAMSTER (BUILDING)	S-SS US	8.68-9.63	23.00pw	28.00pw			
(HIGHWAY)	S-SS-US	8.23-9.83	23.00pw	28.00pw			

If any CLASSIFICATIONS ARE OMITTED IN THE ABOVE SCHEDULE, THE PREVAILING WAGE SCALE SHALL BE PAID. The above and forgoing shall shall be the minimum prevailing wage scale for this project as set by the wage scale committee, but in no way shall it prevent the contractor or sub-contractor from paying a higher rate of wages than set out in the schedule of wages on file.

DATED THIS 27 DAY OF Mar., 1978

Wayne T. Kepler
REPRESENTING GOVERNOR, STATE OF INDIANA.

[signature]
REPRESENTING THE AWARDING AGENT.

Fred M. Rice
REPRESENTING STATE A.F.L. & C.I.O.

IN 77-W-2

4776

TITLE OF ORDINANCE SPECIAL ORDINANCE - CONTRACT #77-W-2 - FILTRATION PLANT ADDITIONS

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS S-78-09-22

SYNOPSIS OF ORDINANCE CONTRACT #77-W-2 - FILTRATION PLANT ADDITIONS, CITY OF FORT WAYNE, INDIANA, WATER WORKS IMPROVEMENTS, AS FOLLOWS: A 24 MILLION GALLON PER DAY EXPANSION TO THE THREE RIVERS WATER FILTRATION PLANT, INCLUDING A CHEMICAL BUILDING WITH CHEMICAL STORAGE, HANDLING AND FEEDING EQUIPMENT, PRIMARY FLOCCULATION, SEDIMENTATION, AND RECARBONATION TANKS AND EQUIPMENT; SECONDARY MIXING, FLOCCULATION, SEDIMENTATION AND RECARCARBONATION TANKS AND EQUIPMENT; EIGHT GRAVITY FILTERS WITH SUPERSTRUCTURE, CHLORINATION EQUIPMENT, PROCESS CONTROL EQUIPMENT, MECHANIVAL AND ELECTRICAL SYSTEM AND SITE WORK AND ALSO INCLUDING MISCELLANEOUS REVISIONS TO EXISTING TREATMENT FACILITIES. HAGERMAN CONSTRUCTION - SHAMBAUGH, JOINT BIDDERS, CONTRACTORS FOR THE PROJECT IN THE AMOUNT OF $14,728,000.00

(CONTRACT ATTACHED)

EFFECT OF PASSAGE PROCEED WITH WATER WORKS IMPROVEMENTS TO SATISFY WATER SUPPLY DEMAND FOR THE CITY OF FORT WAYNE AND TO PROTECT THE CITY FROM ANY FORSEEABLE WATER SHORTAGE WHICH MAY ARISE IN THE VERY NEAR FUTURE

EFFECT OF NON-PASSAGE INABILITY TO PROCEED WITH EXPANSION OF WATER FILTRATION PLANT

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) $14,728,000.00 FROM WATER UTILITY

ASSIGNED TO COMMITTEE

EP